IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.145 OF 2003

Kailas Keru Choudhary Petitioner

versus

State of Maharashtra & others Respondents

Mr.R.D.Suryawanshi for petitioner.
Mr.A.R.Pitale for respondents 2 to 9.
Mr.S.S.Tatkare - APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th December 2005

PC :

1. A serious grievance is raised by Shri Suryawanshi appearing in support of this petition that the Assistant Director of Public Prosecution and Deputy Supdt. of Police opined that the acts attributed to the respondents 2 to 9 (original accused) do not attract Sections 395 and 397 of IPC.. This report has been accepted by the JMFC, Shahapur and he has dropped the prosecution as far as these sections are concerned. According to Shri Suryawanshi the learned Magistrate had directed the Prosecution/ Investigating Officer to file charge sheet and proceed with the matter.

2. Upon hearing Shri Suryawanshi and perusing

the application as well as orders impugned, in my view, neither the opinion of the Assistant Director of Prosecution and the Dy.S.P. nor the order passed by the learned Magistrate, would in any manner take away the right of the prosecution to urge, at an appropriate stage, that the acts attract provisions of Sections 395 and 397 and such others in the Penal Code and the prosecution, therefore, should be permitted to bring home the guilt of the accused as far as these offences as well. Upon such pleas being raised, it would be open for the learned Magistrate to pass appropriate orders including taking cognizance of these offences and neither the report nor the impugned order would be an impediment in doing so. Equally, this does not prejudice rights of the accused, because, pleas, as raised, would naturally be countered by them. This order is passed in view of settled principles that it is for the Court to decide as to how the accused have to be dealt and tried with. Therefore, the petition is disposed of by clarifying that the Magistrate concerned should permit the prosecution to raise pleas that Sections 395 and 397 are attracted as well. Petition disposed of.

(S.C.DHARMADHIKARI, J.)